

18
IN THE
Supreme Court of the United States

October Term 1941.

No. 1173

Amelie
LIONEL A. GOUDEAU,
Petitioner and Appellant below,

versus

AMELIE DAIGLE, WIDOW OF PAUL J. LeBLANC,
ET AL.,
Respondents and Appellees below.

PETITION FOR WRIT OF CERTIORARI AND BRIEF TO
THE UNITED STATES CIRCUIT COURT OF AP-
PEALS FOR THE FIFTH CIRCUIT.

LIONEL A. GOUDEAU, Petitioner,
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**IN THE
SUPREME COURT OF THE UNITED STATES**

October Term, 1941.

No.

LIONEL A. GOUDEAU,
Petitioner and Appellant below,

versus

AMELIE DAIGLE, WIDOW OF PAUL J. LeBLANC,
ET AL.,
Respondents and Appellees below.

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT.**

*To the Honorable the Chief Justice, and the Associate
Justices of the Supreme Court of the United States:*

Your petitioner shows:

SUMMARY STATEMENT OF THE MATTER INVOLVED.

This proceeding originated by suit in the United States District Court for the Eastern District of Louisiana, brought

by Lionel A. Goudeau upon a written contract for the sale of land situated in St. Mary Parish, Louisiana, which contract was executed in the State of Louisiana, for specific performance of said contract claimed by Goudeau as purchaser thereunder, or in the alternative for damages. The defendants are the widow and heirs, and the alleged assignee of a fractional interest in the land, of Paul J. LeBlanc, the vendor.

The District Court granted a motion to dismiss plaintiff's action, filed by defendants. Meanwhile, a supplemental petition had been ordered filed without objection. The judgment of the District Court was affirmed by the Circuit Court of Appeals for the Fifth Circuit which denied an application for a rehearing on its judgment.

BASIS OF THIS COURT'S JURISDICTION.

The jurisdiction of the Supreme Court to review the judgment of the Circuit Court of Appeals by writ of certiorari is sustained by the United States Judicial Code, Section 240 (28 U. S. C. A., Section 347). Rehearing was denied by the Circuit Court of Appeals for the Fifth Circuit on February 2, 1942. (See *Goudeau vs. Daigle, et al.*, 124 Fed. 2d 656.) This petition will be filed on or before May 1, 1942.

The jurisdiction of the District Court was based upon diversity of citizenship, the complainant being a citizen of the State of Texas and the defendants being citizens of the State of Louisiana; and upon the amount in controversy

being in excess of Three Thousand Dollars, exclusive of interest and costs. The statutory authority for this jurisdiction is the United States Judicial Code, Section 24 (28 U. S. C. A., Section 41 (1)). Jurisdiction of the Circuit Court of Appeals was based upon the United States Judicial Code, Section 128 (28 U. S. C. A., Section 225).

QUESTIONS PRESENTED.

The specific questions presented are:

(1) Whether the seller of land located in Louisiana under a contract of sale executed in that State, by failing to perform an obligation imposed upon him that constitutes a suspensive condition in the contract (as found by the Circuit Court of Appeals) thereby relieves the purchaser from paying the balance of the purchase price or making a legal tender thereof or performing any other obligation imposed upon such purchaser, until the seller will have satisfied the suspensive condition.

(2) Whether a purchaser of land located in Louisiana under a contract of sale made under the laws of that State is entitled to specific performance of such contract, especially under Article 2462 of the Revised Civil Code of Louisiana.

(3) Whether a purchaser of land located in Louisiana under a contract of sale made under the laws of that State is entitled, where such contract expressly reserves to

either party the right to specific performance, to a decree of specific performance as a matter of right.

(4) Whether a United States Circuit Court of Appeals may properly affirm the dismissal of a complaint by a District Court, on the basis of laches, where no affirmative plea of laches has been filed.

REASONS RELIED ON FOR ALLOWANCE OF WRIT.

The reasons relied on for the allowance of the writ are:

I.

That the Circuit Court of Appeals has decided important questions of local law, contrary to the applicable statutory provisions, contrary to the jurisprudence of the Supreme Court of the State of Louisiana, and contrary to this Court's expressions on the meaning of the applicable statute.

(a) The Circuit Court of Appeals has resolved important questions of local law contrary to the plain and unambiguous provisions of the Louisiana Statutes (Revised Civil Code).

(1) The action of the Circuit Court of Appeals in refusing to give the proper legal effect to a suspensive condition, which suspensive condition it found to be present in a contract of sale of immovable property in Louisiana, relieved one of the contracting parties (the seller) from the obligations imposed upon him and destroyed the suspensive condition plainly incorporated in such contract.

(2) Likewise, the action of the Circuit Court in refusing to grant the specific performance of a contract of sale of

immovable property situated in Louisiana, as a matter of right, violates the plainly written language of the statutory law on that point (Article 2462, Louisiana Revised Civil Code). Further, the refusal of the Circuit Court to recognize plaintiff's absolute right to specific performance under the language of the contract specifically reserving to either party the right to sue for specific performance, denied plaintiff of his contractual remedy, contrary to Louisiana Law.

(b) The Circuit Court of Appeals has resolved important questions of local law contrary to the well settled jurisprudence of Louisiana.

(1) The action of the Circuit Court of Appeals in refusing to give the proper legal effect to the suspensive condition which it found to be present in the contract of sale of immovable property, is contrary to the jurisprudence found in decisions of the Louisiana Supreme Court. For example, in the case of *Morgan and Lindsey vs. Ellis Variety Stores*, 168 La. 1073, 123 So. 717, a suspensive condition found in a contract of sale relieved the purchaser from the payment of the price because (168 La. 1078):

“ . . . The performance of all of the requirements of Act 270 of 1926 was a condition precedent (suspensive condition) to the obligation of the plaintiff to pay the price, and since the requirements of said Act were not complied with . . . the obligation to pay the price never arose or came into existence.”
(Emphasis by the Court.)

Further illustration of the effect of a suspensive condition as defined by the Louisiana Supreme Court may be

found in *Cornell vs. Hope Insurance Co.*, 3 Mart. (N. S.) 223.

(2) The action of the Circuit Court of Appeals in deciding that specific performance of a contract of sale of land situated in Louisiana was not due as a matter of right is contrary to the Louisiana decisions interpreting statutory provisions on that subject. It is therefore contrary to the cases of *Lehman vs. Rice, et al.*, 118 La. 975, 43 So. 639; *Girault vs. Feucht*, 117 La. 276, 41 So. 572; and others.

(c) This Court has defined and recognized the meaning and effect of a suspensive condition under the Louisiana Statutory Law (Revised Civil Code) in the case of *City of New Orleans vs. Texas and Pacific Railway Company*, 171 U. S. 312, 43 L. Ed. 178, 18 S. Ct. 875. The Circuit Court of Appeals has disregarded the effect of a suspensive condition as defined by this Court in an interpretation of Louisiana Statutes.

II.

That the Circuit Court of Appeals has departed from the accepted and usual course of legal proceedings by affirming the decision of a District Court which dismissed a petition based on laches of the plaintiff where no plea of laches was ever filed by the defendant as required by the New Federal Rules of Civil Procedure—Rule 8 (c).

Wherefore, your petitioner prays that a writ of certiorari issue under the seal of This Court directed to the Circuit Court of Appeals for the Fifth Circuit, commanding said court to certify and send to This Court a full and complete transcript of the record and of the proceedings of the said Circuit Court of Appeals had in the case numbered and

entitled on its docket No. 9941, Lionel A. Goudeau, Appellant, vs. Amelie Daigle, Widow of Paul J. LeBlanc, et al., Appellees, to the end that this cause may be reviewed and determined by the Court as provided for by the Statutes of the United States; and that the judgment herein of said Circuit Court of Appeals be reversed by this Court, and for such further relief as to this Court may seem proper.

Respectfully submitted,

.....
 LIONEL A. GOUDEAU, Petitioner,
 In Proper Person,
 604 La. Nat'l Bk. Bldg.,
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.....
 By JOSEPH A. LORET,
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Dated May 1, 1942.